

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, D. C.

ORDER NO. 1317

IN THE MATTER OF:

REMANDS from United States Court ) of Appeals for the District of ) Columbia Circuit of D. C. Transit ) System, Inc., proceedings: )	Served: April 4, 1974
Application of D. C. Transit Sys-) ) tem, Inc., for Authority to In- ) crease Fares )	Application No. 453 Docket No. 156
Application of D. C. Transit Sys-) ) tem, Inc., for Authority to In- ) crease its Fleet in Lieu of Pur- ) chasing Buses )	Application No. 436 Docket No. 156
Application of D. C. Transit Sys-) ) tem, Inc., for Authority to In- ) crease Fares )	Application No. 226 Docket No. 32
Application of D. C. Transit Sys-) ) tem, Inc., for Authority to In- ) crease Fares )	Application No. 344 Docket No. 101
Application of D. C. Transit Sys-) ) tem, Inc., for Authority to In- ) crease Fares )	Application No. 573
Application of D. C. Transit for ) ) Suspension of the Program for the ) Purchase of New Buses )	Application No. 553 Docket No. 201
Application of D. C. Transit Sys-) ) tem, Inc., for Authority to In- ) crease Fares )	Application No. 613 Docket No. 216

This Order has its origin in the opinions of the U. S. Court of Appeals for the District of Columbia Circuit in D. C. Cir. No. 21,865, Democratic Central Committee v. WMATC, cert. denied February 19, 1974, D. C. Cir. No. 23,720 Bebchick v. WMATC, D. C. Cir. No. 23,747, D. C. Transit v. WMATC, D. C. Cir. No. 23,958, D. C. Transit v. WMATC, D. C. Cir. No. 24,398, Democratic Central Committee v. WMATC, D. C. Cir. No. 24,415, District of Columbia v. WMATC, and D. C. Cir. No. 24,428, Black United Front v. WMATC, each decided June 28, 1973. In these opinions, the Court of Appeals set aside certain aspects of Commission Orders Nos. 773, served January 26, 1968; 981, served October 17, 1969; 984, served October 24, 1969; and 1052, served June 26, 1970, relating to fare increases for D. C. Transit System, Inc. (Transit). The Court of Appeals' opinions remand several issues for further Commission action.

The Commission is of the opinion that the matters at issue in these several proceedings should be consolidated for further proceedings and hearings for the reason that they involve common or related questions of law or fact pertaining to applications for relief sought by Transit. Therefore, the above-entitled proceedings shall be consolidated.

The issues to be considered are categorized for purpose of clarity and consistency under general headings designated herein-after as follows: I. Transferred Properties; II. Riders' Fund; III. Cost-of-Living Index; IV. Efficiency of Management; and V. Methods of Restitution. Identical topic headings will be utilized in subsequent orders.

#### I. TRANSFERRED PROPERTIES

The Commission's Order No. 773, served January 26, 1968, was held invalid by the Court insofar as the Commission had refused to consider the excess of market value over book value of certain properties transferred from operating to nonoperating status. The Court decreed that the appreciation in property values should be treated as an offset to higher fares to the extent that the appreciation exceeded any return of the original cost properly belonging to the investor. The Court made a similar determination in holding invalid Order No. 1052, served June 26, 1970.

The Court provided instructions as to the method by which the Commission might determine the amount of restitution, if

any, that should be made to the farepayers. This determination necessarily requires the identification of all properties which Transit transferred from operating to nonoperating status <sup>1/</sup> prior to the issuance of Order No. 773 and between the time of the issuance of Order No. 773 and Order No. 1052. After identifying the specific property transferred to nonoperating status, the Commission would have to determine the market value of the properties at the time of their transfer to nonoperating status. The dollar amount of appreciation in value would then be calculated by subtracting the book value of the properties from the market value of the properties at the time of the transfer. The amount of restitution to be made to the farepayers would be the amount of appreciation in value minus the taxes and sale expenses that properly would have been deducted from Transit's profit if the assets had been sold at "arm's length" rather than simply being transferred to nonoperating status.

## II. RIDERS' FUND

The Commission's Order No. 981, served October 17, 1969, was set aside by the Court and remanded for further consideration. That order was issued pursuant to the remand of Orders Nos. 563 and 564, served January 26, 1966, which in turn, involved issues initially considered in Order No. 245, served April 12, 1963. The Court held invalid the Commission's consideration of the

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<sup>1/</sup> "All are parcels of real estate which in times past were employed by Transit in mass transportation operations, but which, after later losing their usefulness for that purpose, were withdrawn from service. These withdrawals are reflected on Transit's books recording the removals -- in utility jargon, from "above the line" to "below the line" -- and denoting Transit's continuing interest in the properties as investments. In some instances, Transit retains direct ownership; in others, Transit has conveyed to a wholly-owned subsidiary, and in still others it has made an outright sale." D. C. Cir.No. 21,865, Democratic Central Committee v. WMATC, decided June 28, 1973, at page 3 of the "slip-opinion".

following facets of the prior remands and their effect on the riders' fund <sup>2/</sup>.

#### A. EXCESS EARNINGS

The Court held invalid the Commission's method of determining whether Transit had excess earnings. The Court stated that the Commission misinterpreted the Court's decision in Williams v. WMATC, 415 F.2d 922 (en banc 1968), cert. denied 393 U. S. 1081 (1969), when the Commission combined the periods during which Orders Nos. 245, 563 and 564 were effective. Therefore, the Court found to be improper the Commission's recalculation of the amounts of return on revenue conceded by protestants to be fair and reasonable. Also, the Commission's substitution of the actual interest and equity figures which Transit recorded during each year in question for the protestants' estimates was stated to be improper.

The Court directed the Commission to cancel the adjustment to the riders' fund which was predicated upon the combination of the operative periods of Orders Nos. 245, 563 and 564 and the use of actual interest and equity figures. Then, in lieu of that adjustment, the Commission was directed to add to the riders' fund Transit's earnings in excess of the protestants' conceded fair return under Orders Nos. 245 and 563.

#### B. DEPRECIATION RESERVE

The Court held invalid the Commission's decision not to take account of the excess of market value over book value of the properties transferred to nonoperating status when determining the amount of deficiency in the court-ordered reserve. The Court indicated that, at the time of transfer, the fair market value of the depreciable part of the transferred properties (omitting entirely the nondepreciable or land portion) may well have been sufficiently high that the gain in value of the

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<sup>2/</sup> The riders' fund was a reserve on Transit's books for the benefit of its customers established pursuant to the decision in Bebchick v. Public Utilities Commission, 318 F.2d 187 (en banc) cert. denied 373 U.S. 913 (1963).

depreciable properties would have more than offset the entire depreciation deficiency. The Court further indicated that the unrecovered cost of the assets represented in the deficiency which should have been recovered prior to August 1963, may appropriately be considered to have been returned to Transit's investors as a result of the gain in value of the transferred depreciable assets.

The Court remanded to the Commission's consideration the question of whether Transit's investors were compensated for the depreciation deficiency by the gain represented by the excess of market value over unrecovered cost of properties transferred to below-the-line status. The Court stated that, if Transit is not willing to concede that the net gain on the transferred properties exceeded the depreciation, the Commission would be required to determine the fair market value of the properties at the time of the transfer and compute the net gain to Transit by taking into account taxes and costs which might have reduced the gain if the properties had been sold.

#### C. BUS MAINTENANCE EXPENSE

The Court held that the Commission was in error in failing to charge the riders' fund with the difference between the actual amount of the bus maintenance expense and the amount allowed by Order No. 564 for the period that order was in effect.

The Court directed the Commission to permit Transit to recoup from the riders' fund the difference between the amount of bus maintenance expense estimated in the formulation of Order No. 564 and the expense actually incurred during the period that order was in force.

#### D. FEES AND EXPENSES

The Court held that the Commission had authority to determine the fees for protestants' counsel and expert witnesses. The Court stated that nothing in the Compact precludes the Commission from determining such fees and expenses, under the Court's mandate, as part of the determination of proper fares and of Transit's expenses and accounts.

The Court stated that an award of counsel fees and witness expenses is appropriate in this proceeding and directed the Commission to set, subject to the Court's approval, the amounts to be paid from the fund as fees to the protestants' counsel and expert witnesses.

### III. COST-OF-LIVING INDEX

A portion of the Commission's Order No. 984, served October 24, 1969, was set aside by the Court. It held to be error the Commission's refusal to include within Transit's projected operating expenses for future annual periods during which the proposed fares were to apply, an amount sufficient to cover increased wage and related expenses expected to result as a consequence of what Transit contended would be predictable increases in the cost-of-living index. The Court stated that the Commission's treatment of the cost-of-living index question failed to measure up to its obligation either to make an intelligent estimate of a permissible item of expense, or to provide a factually supported reasonable explanation why such an estimate could not be made.

The Court directed the Commission to use the actual cost-of-living index increases for the effective period of Order No. 984 in computing the incremental amount that Transit would have received had it been allowed fare increases in light of the increases in labor costs under the cost-of-living index escalation clause in its bargaining agreement. The amount Transit would have received from the fare increase should be applied as a setoff against whatever amounts may be determined to be the proper restitutorial remedies mandated by the Court.

### IV. EFFICIENCY OF MANAGEMENT

Order No. 1052, served June 26, 1970, was set aside by the Court, in part, as a result of the Commission's failure to inquire into the ability of Transit to operate efficiently and economically. The Court held that, in determining Transit's right to higher fares, the Commission should have inquired into the efficiency of Transit's management and should have been

guided by the precept that Transit was entitled to an opportunity to earn a return on its investment but not to a guaranteed return, nor necessarily to a fare increase where an examination of its economic health might have revealed that it was incapable of maintaining profitable operations under any reasonable level of fares.

The Court directed the Commission to analyze Transit in a manner similar to that done in the Loconto Report, and the other evidence adduced in the hearings which formed the basis of Order No. 1216, served May 19, 1972. The Commission must determine the impact, if any, which the efficiency of Transit's management should have had on its right to fare increases at the time of Order No. 1052. In addition, an evaluation must be performed as to whether Transit's then financial position would have enabled it to maintain a profitable mass transportation system under any level of fares.

#### V. METHODS OF RESTITUTION

The Commission has been directed by the Court to consider how the amount of restitution, if any, is to be applied to benefit the farepaying public. The Court felt that it would be prudent for the Commission, in framing recommendations as to the precise restitutional relief to be accorded, to consult the Washington Metropolitan Area Transit Authority, the present mass transit operator within the Transit Zone, and to consider such proposals as the Authority might be inclined to advance on this point.

#### VI. PRE-HEARING CONFERENCE

The Commission shall schedule a pre-hearing conference for the purposes stated hereinafter. The parties 3/ at the conference

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3/ The parties to these proceedings are as noted in the Court's opinions: Leonard N. Bechick, Black United Front, Democratic Central Committee of the District of Columbia, District of Columbia, and D. C. Transit System, Inc. In addition, as recommended by the Court, the Washington Metropolitan Area Transit Authority will be made a party on the point of recommending the method of restitution.

shall address comments regarding, among other pertinent factors, the following:

- (1) The simplification of issues;
- (2) The necessity or desirability of submitting pleadings either for the purpose of clarification, amplification, or limitations of the proceedings;
- (3) The possibility of making admissions of certain averments of fact or stipulations concerning the use by the parties of matters of public record, such as annual reports and the like, to the end of avoiding the unnecessary introduction of proof;
- (4) The procedure at the hearing;
- (5) The limitation of the number of witnesses;
- (6) The propriety of prior mutual exchange among the parties of prepared testimony and exhibits; and
- (7) Such other matters, including disposition of requests for discovery, as may aid in the simplification of the development of evidence and appropriate disposition of the proceeding.

THEREFORE, IT IS ORDERED:

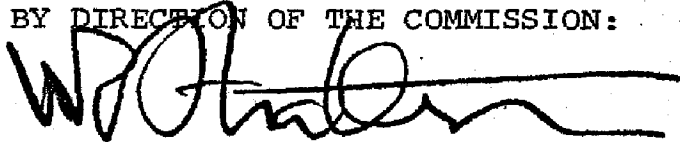
1. That Applications Nos. 226, 344, 436, 453, 553, 573 and 613 of D. C. Transit System, Inc., and related Dockets Nos. 32, 101, 156, 201 and 216, which formed the basis of the Commission's Orders Nos. 773, served January 26, 1968; 981, served October 17, 1969; 984, served October 24, 1969; and 1052, served June 26, 1970, be, and they are hereby, consolidated for the purpose of further proceedings and hearings thereon as mandated by the U. S. Court of Appeals for the District of Columbia Circuit in D. C. Cir. No. 21,865, Democratic Central Committee v. WMATC, cert. denied February 19, 1974, D. C. Cir. No. 23,720, Bebchick v. WMATC, D. C. Cir. No. 23,747, D. C. Transit v. WMATC, D. C. Cir. No. 23,958, D. C. Transit v. WMATC, D. C. Cir.



No. 24,398, Democratic Central Committee v. WMATC, D. C. Cir.  
No. 24,415, District of Columbia v. WMATC, and D. C. Cir. No.  
24,428, Black United Front v. WMATC, each decided June 28, 1973.

2. That a pre-hearing conference be, and it is hereby,  
scheduled to commence Thursday, May 2, 1974, at 10:00 a.m., in  
the Hearing Room of the Commission, Room 314, 1625 Eye Street,  
N. W., Washington, D. C. 20006.

BY DIRECTION OF THE COMMISSION:

A handwritten signature in black ink, appearing to read 'W. R. Stratton', written over a horizontal line.

WILLIAM R. STRATTON  
Commissioner